

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
MEDFORD DIVISION

**MELODY BAKER,**

**Case No. 1:17-cv-00871-CL**

**Plaintiff,**

**v.**

**OPINION AND ORDER**

**UNITED STATES DEPARTMENT  
OF VETERANS AFFAIRS, et al,**

**Defendants.**

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CLARKE, Magistrate Judge.

Plaintiff Melody Baker brings this cause of action against the defendants, the United States Department of Veteran's Affairs and the White City VA, SORCC. The case comes before the Court on Plaintiff's motion for entry of default (#10). For the reasons below, the motion is DENIED.

**DISCUSSION**

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default. Fed.R.Civ.P. 55(a). However, until a defendant is properly served, the defendant has no duty to answer or make other motions. *See* Fed.R.Civ.P. 12(a)(1)(A) (defendant must serve answer "within 20 days after being served with the summons and complaint"). As defendants have no duty to plead until properly served, entry of default prior to service is

improper. *See* Fed.R.Civ.P. 55(a) (clerk shall enter default, when party against whom judgment is sought has failed to plead);

To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee. Fed.R.Civ.P. 4(i)(2). To serve the United States, a party must:

- (A) (i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought--or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk--or
- (ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;
- (B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and
- (C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

Fed.R.Civ.P. 4(i)(1).

Additionally, a default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court. Fed.R.Civ.P. 55(d).

Plaintiff has filed a motion for entry of default against the defendants. However, while it appears that she has served the agency – the U.S. Department of Veteran Affairs – she has not shown that she properly served the United States by delivering a copy of the summons and the complaint to the United States attorney for the District of Oregon, and sending a copy of each to the Attorney General of the United States at Washington D.C. While Plaintiff may cure this failure to properly serve the government, she may not seek default against a party who has not

been served. Additionally, she has not shown that she has established a claim or right to relief by evidence that satisfies the court, as required by Rule 55. Therefore, Plaintiff's motion is denied.

**ORDER**

For the reasons above, the motion for entry of default (#10) is denied. Plaintiff should immediately seek to properly serve the United States government as require by Rule 4(i).

IT IS SO ORDERED AND DATED this 20 day of November, 2017.

A handwritten signature in black ink, appearing to read 'Mark D. Clarke', is written over a horizontal line.

MARK D. CLARKE  
United States Magistrate Judge